FRIDAY UPDATE—MAY 27, 2005

The final update of the activities of the Indiana General Assembly
A publication of the Indiana Judicial Center

FINAL LEGISLATIVE UPDATE

This is the final legislative update, which is a summary of the bills of interest that were signed into law this session. The legislative digest for all bills passed this session can be found at

http://www.in.gov/legislative/reports/2005/DIGEST_OF_ENACTMENTS.PDF. If you would like to see the entire text of any law, as well as any other legislative action, you can find that information at http://www.in.gov/apps/lsa/session/billwatch/billinfo.

CIVIL LAW:

(For information concerning foreign judgments and sheriff sale fees, see **H.E.A. 1153** under the "Probate Law" section.)

S.E.A. 373, P.L. 79, Statutes of Limitation in Property Matters Effective July 1, 2005

Provides that the ten and 12-year statute of limitations for causes of action based on deficient design or construction of an improvement to real property applies to actions brought against a person who owns or possesses the real property at the time an alleged deficiency causes injury or wrongful death. The bill clarifies that a "deficiency" does not mean a failure by a possessor to use reasonable care to maintain an improvement to real property following a substantial completion of an improvement. The bill repeals a provision that prohibits a possessor of property from using the ten and 12-year statute of limitations as a defense in an action. This bill applies to a cause of action accruing after June 30, 2005.

S.E.A. 498, P.L. 200, Local government

Effective July 1, 2005

Permits a defendant to perform community restitution or service instead of paying monetary judgment for ordinance violation if the defendant and municipal attorney file a written agreement with the court and the court approves the agreement. Requires the defendant to pay the amount of the judgment requested if the defendant fails to comply with the agreement approved by the court. Amends the power of a unit to prescribe a penalty for ordinance violations to not more than \$2,500 for the first violation and not more than \$7,500 for a second or subsequent violation. The provision regarding a second or subsequent violation does not apply to ordinances that regulate traffic or parking.

Other bills of interest:

S.E.A. 77, P.L. 104,

Mechanic's liens on towed vehicles and disposal of abandoned vehicles

Effective April 27, 2005 (§1-2, & 4-8), July 1, 2005 (§3, & 9-11)

S.E.A. 132, P.L. 149,

Premises liability of nonprofit religious organizations Effective July 1, 2005

S.E.A. 352, P.L. 66,

When Non-Agricultural Land Is Considered Unsafe Effective July 1, 2005

CRIMINAL LAW:

S.E.A. 18, P.L. 113, Loss of office by convicted official

Effective May 4, 2005

Defines "felony" as a conviction in any jurisdiction for which the convicted person might have been imprisoned for at least one year for purposes of determining if a person is disqualified from assuming or being a candidate for elected office or should be removed from office. This bill now specifies that the time for disqualification or removal from public office is when the jury or the court publicly announce the verdict, or when the person pleads guilty.

S.E.A. 47, P.L. 45, Counterfeiting

Effective July 1, 2005

Amends forgery statute (IC 35-43-5-2) by adding a new D felony counterfeiting offense for knowingly or intentionally making or uttering or possessing more than one written instrument knowing they were made in a manner that they purport to have been made by another person, or at another time, or with different provisions, or by authority of one who did not give authority. Amends forgery definition by adding possessing a written instrument as an alternative to making or uttering the instrument as a way to commit forgery. Amends forfeiture statute (IC 34-24-1-1) to provide for seizure and forfeiture of property used to commit counterfeiting or forgery.

S.E.A. 49, P.L. 115, *Jurisdiction and Venue of Internet Crimes* Effective July 1, 2005

Amends criminal jurisdiction statute (<u>IC 35-41-1-1</u>) to provide for Indiana jurisdiction of a crime

- 1. if conduct that is an element of an offense, or if the result of conduct that is an element of an offense, involves the use of the Internet or another computer network and access to the Internet or other computer network occurred in Indiana, or
- 2. conduct that involves the use of the Internet or another computer network is sufficient under Indiana law to constitute an offense and occurs outside Indiana and the victim of the offense resides in Indiana.

Provides that venue under jurisdiction method

- above is in any county from which access to the Internet or network was made or where any computer or computer data or computer software or computer network used to access the Internet or other computer network is located. Provides that venue under jurisdiction method
- 2. above is in the county where the victim resides at the time of the offense.

S.E.A. 96, P.L. 71, Felony Sentencing

Effective April 25, 2005

H.E.A. 1112, P.L. 213, Technical Amendments to S.E.A. 96

Effective May 11, 2005

Amends felony sentencing procedures by abolishing presumptive sentence and providing that court may impose any sentence within the minimum and maximum authorized range without regard to the presence or absence of aggravating or mitigating circumstances (IC 35-38-1-7.1). Transforms the presumptive sentence into an "advisory sentence," "a guideline sentence that the court may voluntarily consider as the midpoint between the maximum sentence and the minimum sentence" (IC 35-50-2-1.3). Repeals mandatory sentencing factors and changes some aggravating sentencing factors (IC 35-38-1-7.1). Substitutes "advisory sentence" (IC 35-50-2-1.3) for "presumptive sentence" to define the authorized sentences for the habitual offender enhancement (IC 35-50-2-8), the firearm use in commission of the crime enhancement (IC 35-50-2-11), the repeat sexual offender enhancement (IC 35-50-1-2). Provides for jury trial, unless waived, for use-of-a-firearm enhancement (IC 35-50-2-11) or for dealing in controlled substance enhancements for firearm use or possession of a handgun, sawed–off shotgun, or machine gun while committing (IC 35-50-2-13).

S.E.A. 98, P.L. 13, Probation Revocation

Effective July 1, 2005

Amends <u>IC 35-38-2-3</u> to give judges discretion to order execution of all or part of a person's suspended sentence if probation is revoked. The bill codifies the Indiana Supreme Court decision in Stephens v. State.

S.E.A. 101, P.L. 14, Modification of probation

Effective July 1, 2005

Permits a court to hold a new probation hearing (upon motion of the probation department or the court's own motion) and modify a probationer's conditions at any time during the probationary period. The new hearing may be held even if the probationer has not violated a condition of probation and even if the probation department has not filed a petition to revoke probation.

S.E.A. 117, P.L. 50, Dangerous Device Offense and Arrests Effective July 1, 2005

Enacts a new Class A misdemeanor "undisclosed transport of a dangerous device," for a person who checks a firearm, destructive device, or weapon of mass destruction for transport on a passenger airline (IC 35-47-6-1.1). Amends the arrest statute to provide that an officer who has probable cause for an undisclosed transport

misdemeanor may arrest even though the offense was not committed in the officer's presence (IC 35-33-1-1).

S.E.A. 164, P.L. 51, Sex Offender Registration

Effective July 1, 2005

Requires a person convicted of possession of child pornography to register as a sex offender IF the person has a prior unrelated conviction for child pornography. Amends the definition of offender in IC 5-2-12-4.

S.E.A. 175, **P.L.** 31, *Home detention*

Effective July 1, 2005

Allows a court to use GPS monitoring of an offender on home detention. Expands the definition of "monitoring device" in IC 35-38-2.5-3 to include global positioning satellite systems. This bill codifies the Indiana Supreme Court opinion in Chism v. State.

S.E.A. 444, P.L. 192, Methamphetamine

Effective July 1, 2005

Establishes requirements and procedures for law enforcement reports of meth labs to the state police, the local fire department, and the county health department (IC 5-2-15). Adds 21 chemicals to the "chemical reagents or precursors" in the IC 35-48-4-14.5 precursor offense. Enacts IC 35-48-4-14.7 establishing all the following limits on drug sales: Limits sale of non-prescription drugs containing ephedrine or pseudoephedrine to a single 120 milligram "convenience package" per transaction. Imposes line-of-sight requirements on drug retailers for ephedrine and pseudoephedrine drug storage and display. Requires purchases of ephedrine or pseudoephedrine not in "convenience" packages" to be limited to 3 grams per transaction, to persons over 17 years of age, and permits such sales only on display of identification and completion of a purchase log requiring name, address, and driver's license number or other identification number. Requires retailers to report, to state police, ephedrine or pseudoephedrine "suspicious" orders" as defined by U.S. Drug Enforcement Administration, or as recommended by Attorney General as part of the federal Comprehensive Methamphetamine Control Act of 1996, or as for cash or money order of \$200 or more. Requires retailers to report within three days "unusual theft" of ephedrine or pseudoephedrine, defined as 10 or more grams in 24 hours. Makes knowing or intentional violation of these requirements a C misdemeanor, unless there is a prior conviction which makes violation an A misdemeanor.

S.E.A. 523, P.L. 92, Assistance for Reentry Court Participants Effective July 1, 2005

Makes permanent a temporary law that permits certain drug offenders participating in a reentry court program to receive food stamps or Temporary Assistance to Needy Families (TANF).

S.E.A. 525, P.L. 53, *Life imprisonment for certain child molesters* Effective July 1, 2005

Authorizes the state to seek a sentence of life imprisonment without parole for a person who commits a Class A felony constituting a sex offense against a child IF the person has a prior unrelated Class A felony conviction for a sex offense against a child. The statute defines "sex offense against a child" as an offense under IC 35-42-4 in which the victim is a child less than 18 years old.

H.E.A. 1039, P.L. 171,

Interfering with Drug or Alcohol Screening Tests

Effective July 1, 2005

Makes it a Class B misdemeanor for a person who is incarcerated, participating in community corrections or court-ordered alcohol or drug abuse treatment, on probation or parole, or on pretrial release to interfere with, or possess something to interfere with, a drug or alcohol screening test.

H.E.A. 1057, P.L. 209, Open Alcoholic Beverage Containers

Effective July 1, 2005

Provides exceptions to the law concerning open alcoholic beverage containers in motor vehicles. Makes it a Class C infraction for a person in the passenger compartment of a motor vehicle to possess an alcoholic beverage container:

- 1. that has been opened;
- 2. that has a broken seal; or
- 3. from which some of the contents have been removed.

4.

Removes the requirement that, in proving a violation of the open container law, the state must show that the driver of the motor vehicle had a minimum level of alcohol in the driver's blood or breath. Specifies that a violation of the open container law occurs while a motor vehicle is on the right-of-way of a public highway even if the vehicle is not in operation. Specifies that a violation of the open container law is not considered a moving traffic violation:

- 1. for purposes of the law concerning bureau of motor vehicles operating records; and
- 2. for which points are assessed by the bureau under the point system.

H.E.A. 1099, P.L. 7, Prior Conviction Voyeurism

Effective July 1, 2005

Expands definition of Class D felony voyeurism to include offenses with a prior unrelated conviction of voyeurism in Indiana or with a conviction in another state for a substantially similar offense (IC 35-45-4-5).

H.E.A. 1112, P.L. 213,

Direct Placement in Community Corrections

Effective July 1, 2005

Section 6 amends <u>IC 35-38-2.6-1</u> to allow a person convicted of OWI with 2 prior unrelated convictions to be placed directly in a community corrections program IF:

- 1. the person is required to serve the nonsuspendible part of the sentence in a work release program or a program that uses electronic monitoring as part of the person's supervision; and
- 2. the person participates in a court-approved substance abuse program.

Excludes OWI offenses resulting in serious bodily injury or death (IC 35-38-2.6-1).

H.E.A. 1270, P.L. 143,

Unauthorized Entry of an Auto, Conversion

Effective July 1, 2005

Enacts a new Class B misdemeanor for entry of a motor vehicle without permission of owner (IC 35-43-4-2.7). Establishes exceptions for police, repossessors, or abandonment of vehicle. Makes it an A misdemeanor if there is visible steering column damage or ignition switch alteration. Makes it a D felony if the vehicle is occupied while it is used to further the commission of a crime, if the defendant knew or should have known that a person intended to use the vehicle in the commission of a crime. Establishes an unauthorized entry defense of reasonable belief entry of vehicle was necessary to prevent bodily injury or property damage. Establishes rebuttable presumption defendant had no permission from owner if there is visible steering column damage or ignition switch alteration. Amends the criminal conversion statute to make it a D felony if the defendant exerts unauthorized control over another's motor vehicle with the intent to use the vehicle to assist the person in the commission of a crime (IC 35-43-4-3). Makes criminal conversion a C felony if the defendant exerts unauthorized control over another's motor vehicle and uses the vehicle to assist the person in the commission of a felony.

H.E.A. 1403, P.L. 181, *Insurance Fraud*

Effective July 1, 2005

Enacts a new D or C felony offense of insurance fraud, expansively defined (IC 35-43-5-4.5). Enacts a new A misdemeanor offense of insurance application fraud. Id. Removes insurance fraud from the regular fraud offense (IC 35-43-5-4).

H.E.A. 1776, P.L. 187,

Seizing Weapons from a Dangerous Individual

Effective July 1, 2005

Provides that a law enforcement officer may request a circuit or superior court to issue a warrant to search for and seize a firearm in possession of a person who is dangerous if the officer provides an affidavit stating:

- 1. why the officer believes the person is dangerous and in possession of a firearm; and
- 2. describing the officer's interactions and conversations with the person who is alleged to be dangerous, or another individual (if the officer believes that information from that individual is credible and reliable) that have led the officer to believe the person is dangerous and in possession of a firearm.

The affidavit must also specifically describe the location of the firearm. The circuit or superior court may then issue a warrant if the court determines that probable cause exists to believe that the person is dangerous and in possession of a firearm.

The bill further provides that if an officer seizes a firearm from a person whom the officer believes to be dangerous without obtaining a warrant, the officer must submit to the court having jurisdiction over the person believed to be dangerous, a written statement under oath or affirmation describing the basis for the officer's belief that the person is dangerous. If the court reviews the written statement had finds probable cause exists to believe the person is dangerous, the court shall order the law enforcement agency having custody of the firearm to retain the firearm. The bill specifies that this provision does not authorize a law enforcement officer to perform a warrantless search or seizure, if a warrant would otherwise be required.

The bill defines "dangerous" to mean a person who presents an imminent risk of personal injury to the person or to another person; or a person who may present a risk of personal injury to the person or another person in the future and the person has a mental illness that may be controlled by medication, and the person has not demonstrated a pattern of voluntarily and consistently taking the person's medication while not under supervision, or is the subject of documented evidence that would give rise to a reasonable believe that the person has a propensity for violent or emotionally unstable conduct. The fact that a person has been released from a mental health facility or has a mental illness that is currently controlled by medication does not establish that the person is dangerous.

If a court issued a warrant to seize the firearm, the officer who served the warrant shall file a return with the court no later than 48 hours after the warrant was served, stating that: the warrant was served; the time and date the warrant was served; the name and address of the person named in the warrant; and the quantity and identity of any firearms seized by the officer. Not later than 14 days after the return is filed, the court shall conduct a hearing to determine whether the seized firearm should be returned to the person from whom it was seized, or retained by law enforcement. At the hearing, the state has the burden of proving all material facts by clear and convincing evidence. If the court is satisfied with the state's showing, the court may order the agency having custody of the firearm to retain it and if the person has a license to carry a handgun, have it suspended. If the state has failed to prove that the person is dangerous, the court shall order the seized firearm to be returned.

An individual may petition the court for return of the firearm at least 180 days after the date a court orders a law enforcement agency to retain the firearm. Upon receipt of such a petition, the court shall conduct a hearing where the individual may be represented by an attorney and must prove by a preponderance of the evidence that the individual is not dangerous. If the court determines that the person is not dangerous, the court shall order the agency to return the firearm to the individual; if the court denies an individual's petition, the individual may not file a subsequent petition until at least 180 days after the date the petition was denied.

If at least five years have passed since the court first conducted the hearing to retain a firearm under this chapter, after giving notice to the parties and conducting a hearing, the court may order the agency having custody of the firearm to destroy or otherwise permanently dispose of the firearm.

Other bills of interest:

S.E.A. 13, P.L. 69,

Permits the use of DNA data erroneously obtained or added to the DNA database Effective July 1, 2005

S.E.A. 95, P.L. 61,

Sentencing Policy Study Committee Continued Through 2006.

Effective July 1, 2005

H.E.A. 1398, P.L. 2,

Sec. 44 Keeps the requirement for the receiving state to conduct a probable cause hearing prior to retaking or reincarceration under the new Interstate Compact for Adult Offender Supervision in the same way it was required under the old compact. Effective April 25, 2005

FAMILY AND JUVENILE LAW:

(For information concerning use of GPS monitoring: crime delinquents, see S.E.A 175 under the "Criminal Law" section.)

S.E.A. 2, P.L. 68, Parenting time references; IV-D

Effective July 1, 2005

Changes all references in the Indiana Code from "visitation" to "parenting time." Provides a prosecutor in a IV-D case is not required to mediate, resolve or litigate a dispute between the parties relating to the amount of parenting time or the parenting time credit.

S.E.A. 8, P.L. 112, Arbitration in family law

Effective July 1, 2005

Adds IC 34-6-2-44.7 and 34-57-5 to provide for procedures for arbitration in family law cases if both parties agree in writing to submit to arbitration.

S.E.A. 340, P.L. 129, CHINS; GAL/CASA; Adoption; Other

Effective July 1, 2005

Amends IC 31-9-2-6, 31-34-10-2, 31-34-22-2, 31-34-23-1 & 4 to add Court Appointed Special Advocates (CASAs) to the list of persons who may petition a court for counseling of a child, petition the juvenile court for modification of disposition, receive notice of an initial hearing in a CHINS case, and receive reports prepared by the state for reviews and modification. Amends IC 31-34-2.5-4 to permit a court to appoint a CASA whenever a child is taken into custody without a court order.

Amends IC 31-19-4-8 and 31-19-4.5-4 to provide if a person waives notice of adoption under this section in writing, the person will not receive a notice of the adoption proceedings.

Amends IC 31-19-4-9 to provide notice of adoption is not needed if actual notice was given or a person attempted to give notice to a putative father under IC 31-19-3 and the putative father could not be reached at that address unless the putative father registers that address with the putative father registry.

Amends IC 31-19-9-2 to prohibit a mother from executing a prebirth consent to adoption. Permits a father's prebirth consent to adoption if it is writing, notarized, and contains an acknowledgment the consent to adoption is irrevocable and he will not receive notice of the adoption. He may not challenge or contest the adoption.

Amends IC 31-19-9-8 to add to the list of conditions when consent is not required for adoption. A child's biological father is not required if he denies paternity in writing, notarized and contains an acknowledgment the denial of paternity is irrevocable and he will not receive notice of adoption proceedings. He may not challenge or contest the child's adoption.

Adds IC 31-19-10-0.5 to provide a party bearing the burden of proof in an adoption contest must prove the party's case by clear and convincing evidence.

Adds IC 31-19-12-5 to permit a child-placing agency, governmental entity or licensed attorney to transfer adoption records to the State Registrar for inclusion in the adoption history program. Provides an attorney who transfers adoption records under this section does not violate attorney-client privilege. IC 31-19-18-5 requires the State Registrar to adopt rules and procedures for implementation of this section.

Amends IC 31-19-15-1 to provide child support arrearages owed by a biological parent are not extinguished by an adoption decree.

Amends IC 31-19-15-2 to provide if the adoption parent of a child is married to the previous adoption parent, the parent-child relationship of the previous adoptive parent is not affected by the adoption.

Amends IC 31-19-28-1 to provide if a person is adopted outside Indiana, and if a name, other than the name in the adoption decree is requested, the adopted person shall take the name requested in the petition filed in this section.

Amends IC 31-35-1-6 to provide in a termination of parental rights proceeding a parent's consent to termination is not required under IC 31-19-9-8. Consent is also not needed if the child's biological father denies paternity before or after birth in writing,

notarized and contains an acknowledgment the denial of paternity is irrevocable and he will not receive notice of adoption or termination proceedings. He may not challenge or contest the child's adoption or termination of parental rights.

Amends IC 31-35-1-11 to provide notice to a parent in a termination proceeding is not needed if waived by the child's parent in writing, notarized and contains an acknowledgment the denial of paternity is irrevocable and the parent will not receive notice of adoption or termination proceedings. The parent may not challenge or contest the child's adoption or termination of parental rights.

Amends IC 35-46-1-9 to provide certain payments made in connection with an adoption are not a crime if the reason is documented by a licensed social worker.

S.E.A. 481, P.L. 133,

Transitional services; Medicaid waiver Effective May 4, 2005 (§3), July 1, 2005 (§1-2)

Allows Indiana to implement a program to provide transitional services to individuals who have become 18 years old or emancipated while in foster care.

Allows the Office of Medicaid Policy to apply for an amendment to the state Medicaid plan to provide these services.

S.E.A. 529, P.L. 234,

Department of Child Services; Redaction of Child Death Records; Criminal History Check for Child Placements; Child Support: Collection Agencies; Payments to State Central Collection Unit; Other

Effective Upon Passage (§ 85-91, 193, & 200); July 1, 2005 (§ 2-84, 92-192, 194-199, & 201-2); July 1, 2006 (§1)

Amends IC 6-1.1-17-3 to require a county to adopt a tax rate sufficient to pay the costs of child services under the Family and Children's Fund (FCF) and the Children's Psychiatric Residential Treatment Services Fund (CPRTSF).

Amends IC 6-1.1-17-14 to require the county auditor to initiate an appeal if the county fiscal body does not fund the FCF and the CPRTSF at the rate necessary to fund these two funds.

Adds IC 10-13-3-7.5 to define an emergency out-of-home placement for record check purposes.

Adds IC 10-13-3-27.5 to permit the State Police to conduct a national name based criminal history record check of individuals in a home residing with a child placed there by an emergency placement. Within 72 hours after the DCS or probation receives the result of the national name based criminal history check, the Department of Child Services (DCS) or the juvenile probation officer shall provide the department with a complete set of fingerprints of all individuals in the out-of-home placement with the

child. The child shall be removed from the location if an individual residing in the home does not provide a set of fingerprints as requested. The State Police may charge a fee for processing the national name based criminal history record check. The DCS shall pay the fee above and the costs for fingerprinting, for out-of-home placements arranged by the DCS and the juvenile court shall pay the fee above and the costs for fingerprinting, if any, for out-of-home placements recommended by the juvenile court. If the out-of-home placement is denied as the result of the national name based criminal history check, an individual may contest the denial within five (5) days of the denial.

Renames the Division of Family and Children the "Division of Family Resources." The new Division is responsible for Food Stamps, TANF, Domestic Violence Prevention and Treatment Fund, and Child Care and the Development Block Grant. The Department of Child Services will be responsible for child protection, foster care, adoption, child services, independent living, residential and foster care licensing, CHINS, children's psychiatric residential treatment services, family services, and child support services. The Director of the Division of Family Resources will appoint the directors of the county Offices of Family and Children in consultation with the Director of the Dept. of Child Services.

Amends IC 12-13-15-6 and 12-13-15.1-7. Provides the statewide child fatality review committee shall review every record concerning the death of child held by the DCS or the local child fatality review team.

Amends IC 12-17-2-18 to permit the child support bureau to contract with a collection agency to collect arrearages on child support, which are at least two (2) years old.

Amends IC 12-17.4-4-1.7 concerning the training requirements for a special needs foster family home.

Amends IC 12-19-1-10 concerning the duties of the county office.

Amends IC 12-19-2-2 to provide the director of the DCS and officers and employees of DCS are not personally liable, except to the state, for an official act done or omitted in connection with the performance of their duties.

Provides DCS is the purchasing agency for services to meet its responsibilities, and may procure services on a regional basis. If a regional procurement agreement is entered, the county shall procure services according to a formula that allocates the costs in proportion to the use of services by the county.

Amends Indiana law to permit a county department to conduct a public hearing to determine whether to recommend that a county borrow monies on a short term basis to fund services from the FCF or the CPRTSF. If the county fiscal body does not borrow the money, they shall inform the DCS of that decision. Permits the DCS to have the county

auditor levy an amount of property tax to pay the principal and interest due on the loan requested by them.

Amends IC 12-19-7-3 and 12-19-7.5-5 to prevent reversion of monies left in the FCF and the CPRTSF at the end of the budget year to the county general fund. Amends Indiana law to require the county, for taxes due and payable in each year after 2005, to impose a tax levy for the FCF and CPRTSF in an amount necessary to pay the costs of the child services of the county for the next fiscal year. Requires the Department of Local Government Finance to review the property tax levy and comply with IC 6-1.1-17-3. Amends the Indiana Code to require the DCS, with the advice of the judges with juvenile jurisdiction and after consultation with the Division of Family Resources, to prepare a budget and compute the tax levy required to fund the budget. Amends the Indiana Code to require the county fiscal body to make appropriations from the FCF or the CPRTSF to pay for child services of the county for the next fiscal year. Requires the Department of Local Government Finance to order the county to fund the CF and the CPRTSF if the county executive fails to borrow sufficient money if it appears the FCF and CPRTSR will be exhausted before the close of the fiscal year.

Amends IC 12-19-7.5-33 to provide if a county has a debt for juveniles committed to the Department of Correction, one-half of the monies left in the CPRTSF as determined by a formula in the statute, shall be used to pay the juvenile debt.

Adds IC 20-19-5 to require the Department of Education, with the DCS, DOC and DMHA to form a plan to provide recommendations to coordinate children's social, emotional and behavior health from birth to age 22.

Adds IC 31-9-2-22.5 to define "conduct a criminal history check" for purposes of an out-of-home placement for a child. This section means the caseworker or probation officer would request the State Police to conduct the limited criminal history, the national fingerprint based criminal history background check or the national name based criminal history check in connection with a person residing in a location designated by the DCS or juvenile court for the out-of-home placement for child.

Amends IC 31-16-15-1, 4, 7, 8, 10, 15, & 16 to change references from "county clerk" to "state central collection unit" for purposes of forwarding monies in connection with the collection of child support. Requires the use of a child support obligor's Social Security number by income payors. Provides for a \$25.00 civil penalty per pay period against a certain income payors that do not make payments through electronic funds transfers. These sections effective May 12, 2005.

Amends IC 31-19-2-7.5 to exempt petitioners for adoption from record check requirements if the record check has already has conducted a criminal history check within the past year.

Amends IC 31-19-7-1 to require a criminal history check before giving prior written approval for a placement in a proposed adoptive home if the child is under care and supervision of the juvenile court or department of child services.

Adds IC 31-33-1.5, which creates the Department of Child Services (DCS). Requires the department to submit information concerning the caseloads of child protection services and other information every three (3) months to the state Budget Committee and the Legislative Council. Creates the Child Support Bureau within the DCS. Permits the DCS to procure child services in agreements that cover one (1) or more counties. Adds IC 31-33-2-2.3 to require, after June 30, 2008, the DCS have sufficient qualified and trained staff to fulfill the purposes of this new article.

Amends IC 31-33-3-1 provide the community child protection team must include the director of the county office of family and children or the county office director's designee.

Amends numerous sections of the Indiana Code to move the responsibility to receive, investigate and make reports of abuse and neglect from the local CPS to the DCS.

Amends IC 31-33-18-1.5 to require the DCS to provide all records regarding a child whose death, or near fatality, as defined by 42 U.S.C. 5106a, may have been the result of abuse, abandonment or neglect. Requires the court exercising juvenile jurisdiction to determine whether the allegations contained in an indictment, information, or complaint would cases a reasonable person to believe the child's death or near fatality may have been the result of abuse, abandonment, or neglect. Requires the court receiving the records above to redact, in thirty (30) days, identifying information to exclude information about individuals and all identifying information of a child less than eighteen (18) years old for any person requesting the records.

Amends IC 31-34-10-3 to require the juvenile court to appoint a guardian ad litem, court appointed special advocate, or both in all cases when a child is alleged to be a CHINS.

Amends IC 31-34-18-6.1, 31-34-19-7, 31-34-20-1.5, 31-34-21-7.5, 31-37-17-6.1 and 31-37-19-6.5 to require the caseworker or probation officer to conduct a criminal history check as defined in IC 31-9-2-22.5 on each individual residing in the home when a child is placed outside their home. The probation officer or caseworker is not required to conduct a criminal history check if the out-of-home placement is to an entity or facility that is not a residence or is licensed by the state.

Makes conforming amendments to transfer authority of the DFC to the DCS. Effective May 12, 2005

Requires the Medicaid Policy and Planning Office to apply for a Medicaid waiver for special needs adopted children under 19 years old.

Establishes a select committee on the reorganization of child services in Indiana consisting of members appointed by the Governor, President Pro Tem of the Senate, Speaker of the House and other members by virtue of their office. This section is effective May 12, 2005.

Requires the DCS to submit a report to the Legislative Council and Health Finance Commission on the education levels and salaries of child protection and child welfare caseworkers and supervisors by September 1, 2005.

H.E.A. 1217, P.L. 100, Release of certain adoption records

Effective July 1, 2005

Amends Indiana's adoption laws to permit a person, licensed child care placing agency, and county office of family and children to release to an adoptee at least 21 years old who provides identification, certain social, medical, psychological, and education records concerning the adoptee if the adoption was granted before July 1, 1993. Information released may not include information that would identify the birth parents.

H.E.A. 1263, P.L. 55, *ADR in family law cases*

Effective July 1, 2005

Amends IC 33-23-6-2 to provide two or more courts with jurisdiction over domestic relations and paternity may establish one (1) ADR fund by agreement of all the courts in the county with that jurisdiction. Permits a county to deposit co-payments into the ADR fund. Permits the St. Joseph County Probate Court to participate in the ADR program.

H.E.A. 1794, P.L. 242,

Out of school suspension program; suspension and expulsions; definition of habitual truant

Effective July 1, 2005

Adds IC 20-8.1-5.2 and 20-33-8.5 to authorize a voluntary agreement between a school corporation and a juvenile court for court-assisted resolution of school suspension and expulsion cases. The agreement may require the court to supervise or provide for the supervision of an expelled or suspended student. The agreement must provide how expenses of supervising the student are funded.

The student shall be given an informal hearing before the court as soon as practicable following the student's referral to the court. This is not a CHINS hearing. A parent has a right to be present at the hearing. The student's appearance at the hearing shall not be used against the child in any subsequent proceeding and the records of the student's appearance shall be expunged after successful completion of the program. This chapter does not deprive a child of any due process rights to which the child may be entitled.

Amends IC 20-33-2-11 to define a child as a habitual truant if the child is chronically absent by having unexcused absences from school from more than ten (10) days of school in one (1) school year.

Permits a public school student who is at least 16 years old and less than eighteen (18) years old to withdraw from school after attending an exit interview, obtaining consent of the student's parent and school principal. Requires certain information to be given to the withdrawing student about the consequences of the withdrawal.

Requires school to report the reasons for student suspensions and expulsions to the Department of Education.

Permits schools to establish a flexible instruction program for certain high school students.

Makes other changes in procedures for school suspensions and expulsions and technical amendments to conform with the Title 20 recodification.

Other bills of interest:

S.E.A. 12, P.L. 11,

Requires Department of Administration to adopt rules to implement a "Code Adam" protocol for lost or missing children in certain state buildings. Effective July 1, 2005

S.E.A. 301, P.L. 65,

Requires DOE to develop cheerleading safety guidelines.

Effective July 1, 2005

S.E.A. 372, P.L. 89,

Requires the state to pay transfer tuition for a student placed in facilities or institutions under limited circumstances.

Effective July 1, 2005

S.E.A. 569, P.L. 110,

Requires State Dept. of Health to adopt bad weather guidelines for the safety of children. Effective July 1, 2005

JUDICIAL ADMINISTRATION:

S.E.A. 303, P.L. 33, Marion superior court

Effective July 1, 2005

Allows a party to a superior court proceeding that has been assigned a magistrate to request that an elected judge preside over the proceeding if the request is in writing, and filed with the court within certain specified periods of time. If the request is timely, the proceeding shall be transferred. This bill also deletes the provision that would limit

the salary of the court administrator to 80% of the salary of a judge, and instead leaves that salary setting authority with the executive committee.

S.E.A. 322, P.L. 128, Local Spending on Criminal Defense Effective May 4, 2005

Provides that a unit or municipal corporation may not pay the legal expenses incurred by an officer or employee of the unit or municipal corporation in defending against a criminal action, certain civil actions, or a proceeding where the employee or officer is charged with an infraction. If the officer or employee is found to have no criminal or civil liability, the bill requires the unit or municipal corporation to reimburse the officer or employee for reasonable expenses (as determined by the local unit) incurred in defending the charges.

H.E.A. 1001, P.L. 246,

State claims for county's portion of juvenile placement costs, reduction of property tax replacement monies for failure to pay; agreement to repay past due amounts; cost of commitment of juveniles to DOC set at \$60.00; maximum caseloads and training of caseworkers; judicial officers; other Effective July 1, 2005

Amends IC 4-24-7-2 & 4 to provide a procedure for the quarterly billing of the county's portion of the cost of placements at a juvenile Department of Correction institution. Provides if the county has not paid the amounts due within six (6) months, the State Auditor shall reduce the property tax replacement credit to the county and withhold the amount owed.

Amends IC 11-10-2-3 to require a county that commits a juvenile to the Department of Correction under IC 4-24-7-4 pay the state \$60.00 per day, not one-half (1/2) the daily cost under the previous formula.

Adds IC 31-33-1.5-5.5 to establish maximum caseloads for caseworkers at twelve (12) active cases per month for assessment and investigation or seventeen (17) active cases per monthly for caseworkers assigned ongoing cases. Applies after June 30, 2008.

Adds IC 31-33-2-2.1 to require the Department of Child Services to have sufficient qualified and trained staff to meet the standards above and provide training for their staff. Applies after June 30, 2008

Adds IC 33-33-48-7.5 to permit the judge of Madison Superior Court to jointly appoint one (1) full-time magistrate.

Adds IC 33-33-62-1 to permit the judge of the Perry Circuit Court to appoint one (1) full-time magistrate.

Amends IC 33-33-84-3 to increase from four (4) to five (5) the number of elected judge in Vigo Superior Court. Adds a non-code provision indicating this does not expand

the Vigo Superior Court to (five) 5 judges until January 1, 2006. The Governor shall appoint a person to serve as the initial judge of the Vigo superior court amended by this act to serve from January 1, 2006 until December 31, 2006. The initial election for this court will be held in November 2006 for a term beginning January 1, 2007.

Adds a non-code section to permit a county that has an outstanding balance owed for placements at a juvenile institution to attempt to establish a repayment plan with the state budget agency before August 15, 2005. The repayment plan may include installments and the use of bonds. The term of the bonds may not exceed ten (10) years. If an agreement is not reached, the State Auditor shall reduce the property tax replacement credits and withhold the amount owed.

Adds a non-code section to require the Department of Child Services to submit a report to the legislative council and the health finance commission on the education and salary levels of child welfare caseworkers and supervisors by September 1, 2005.

H.E.A. 1113, P.L. 176,

Court fees and administrations
Effective June 1, 2005 (§ 24), July 1, 2005 (all other sections)

Creates the judicial salaries fee to pay for the judicial and prosecutor salary increases enacted this year; for all cases except small claims, the fee will initially be \$15.00 beginning July 1, 2005. It will go up a dollar per year on July 1 of each year through 2010, when it will reach a maximum of \$20.00. In small claims cases, the fee will start at \$10.00 on July 1, 2005, and it will go up by a dollar a year until it reaches its statutory maximum of \$15.00 on July 1, 2010.

Creates the DNA sample processing fee to pay for the collection, shipment, analysis and preservation of DNA samples; in each action in which a person if convicted of an offense, required to pay a pretrial diversion fee, found to have committed an infraction or found to have violated an ordinance the clerk shall collect \$1.00.

Requires the collection of a \$2.00 court administration fee in all cases.

Changes the name of the judicial administration fee to the public defense administration fee and raises it from \$2.00 to \$3.00; requires that the clerk collect it in all cases.

Requires the clerk to collect a service fee in civil actions of \$10.00 for each additional defendant named other than the first named defendant.

Requires the clerk to collect a service fee in small claims actions of \$10.00 for each defendant in an action.

Increases the fee for deferred prosecution from \$50.00 to \$120.00.

Provides that 75% of the judicial salaries fee collected by city, town and Marion County small claims courts will be kept by those jurisdictions; provides that all of the service fees will be kept by the jurisdiction in which the court operates; all of the rest of the fees will be distributed to the state.

Specifies the purposes for which funds derived from a deferral program or a pretrial diversion program may be used; additionally requires that these funds may be used only in accordance with guidelines adopted by the prosecuting attorneys council.

Prohibits persons arrested or charges with operating while intoxicated or an offense involving intoxication or the operation of a motor vehicle that arose from the same episode of criminal conduct as the operating while intoxicated offense from participating in a pretrial diversion or deferral program; prohibits deferral for certain offenses in connections with the operation of a commercial motor vehicle.

Exempts the charging of fees in proceedings concerning certain protection orders from foreign jurisdictions.

H.E.A. 1141, P.L. 237,

Superior courts Effective January 1, 2006 (§ 1 & 26), July 1, 2005 (all other sections)

Creates one new superior court on January 1, 2006 in both Dearborn County and DeKalb County; creates on new superior court on January 6, 2006 in Howard County; adds an eighth judge to the Monroe circuit court on January 1, 2006; changes the Montgomery county court to a superior court effective January 1, 2006; creates two new superior courts in Hendricks County and one new superior court in Hamilton County on January 1, 2007; adds a ninth judge to the Monroe circuit court on January 1, 2008; allows the existing superior courts in Hendricks County to appoint a magistrate to serve until January 1, 2007; abolished the DeKalb County small claims referee.

Other bills of interest:

S.E.A. 212, P.L. 32,

Allows a senior judge to be appointed to serve the tax court

Effective July 1, 2005

MISCELLANEOUS:

S.E.A. 503, P.L. 91,

Release of Social Security Numbers Effective Upon Passage (§4), July 1, 2005 (§1-3)

Prohibits a state agency from releasing the Social Security number of an individual, except in certain limited circumstances. Defines "state agency" to exclude the judicial or legislative departments of state government, except for the lobby registration commission. Includes various provisions about procedures for notifying individuals about security breaches, penalties for improper releases, and county recorders' redaction of records.

Provides for an increase in exemption amounts for property subject to attachment in a bankruptcy proceeding or judgment against the property holder. Specifically, the real estate and personal property constituting a primary family residence exemption amount increases from \$7500 to \$15000; the other real estate or tangible personal property exemption increases from \$4000 to \$8000; and, the intangibles exemption increases from \$100 to \$300. The bill also provides that the department of financial institutions shall adopt a rule establishing new exemption amounts every six (6) years.

This bill also exempts interest a debtor has in a Section 529 college savings plan or qualified education savings account, and a debtor's interest in a refund or a credit received or to be received under section 32 of the Internal Revenue Code.

Other bills of interest:

H.E.A. 1765, P.L. 225,

Natural resource matters regarding motorized carts, off-road vehicles, snowmobiles, and hunting and fishing licenses

Effective upon passage (§ 5-6, 14-15, 25, & 27), July 1, 2005 (§ 1-4, 7-13, 16-24, & 26)

PROBATE LAW:

H.E.A. 1153, P.L. 238,

*Probate, trust, and inheritance tax matters*Effective July 1, 2004 (retroactive §1, 3, & 64), July 1, 2005 (§2, 4-20, 25-63, & 65-66), January 1, 2006 (§ 21-24)

1. Probate/Trust: Allows a person to deposit a will with the circuit court clerk of the county in which the testator resided when the will was executed. Requires the circuit court clerk to collect a \$25 fee for depositing the will, unless the circuit court waives the fee. Makes a fee waiver mandatory if the depositor is participating in a supreme court program, and permits a fee waiver if the depositor is an attorney who will no longer practice law.

Prohibits a will from admission for probate unless the will is presented for probate within three years after the testator dies. Requires a petition for probate of a will or for the appointment of an administrator to state whether the decedent, heirs, legatees, and devisees are adults or minors. Requires, absent litigation, a spouse to elect against a will within three months after the will is admitted to probate. Provides that a subsequent childless spouse's share of a deceased individual's real property is calculated less liens and encumbrances. Allows a person who receives only a specific bequest to receive an estate inventory limited to the bequest. Repeals a statute that requires a personal representative to file a report of sale (IC 29-1-15-16). Allows a will or revocable trust to incorporate by reference a list of

items for disposition that may be amended after incorporation.

Allows a trustee or an interested person to petition the court to determine a trust's heirs and the heirs' interests. Actions to contest a revocable trust must be filed within the earlier of 90 days after receiving trust certification from trustee or 3 years after settlor's death.

Provides that an individual adopted as an adult is to be treated as the natural child of the adopting parent for purposes of the inheritance tax if the adoption was finalized before July 1, 2004. Specifies that a stepchild of the transferor is a Class A beneficiary for purposes of the inheritance tax, whether or not the stepchild is adopted by the transferor. Provides that a lineal descendant of a stepchild of a transferor, whether or not the stepchild is adopted by the transferor, is a Class A transferee for purposes of the inheritance tax. Automatically extends the due date for the Indiana inheritance tax return if the Internal Revenue Service allows an extension for a federal estate tax return.

This bills also makes changes to the Uniform Transfers to Minors Act; attorney in fact provisions; trustee powers, duties, and vacancy provisions; the cy pres doctrine; disclaimed interest provision; constructive trusts; and various other probate and trust provisions.

- 2. Foreign judgments: Provides that defenses raised by a foreign judgment debtor must be ruled upon before the foreign judgment: (1) may be enforced by execution; or (2) constitutes a lien. Provides that a foreign judgment creditor is entitled to the same prejudgment remedies as an Indiana judgment creditor. Authorizes an Indiana court in which a foreign judgment is filed to preliminarily litigate certain postjudgment motions.
- 3. <u>Sheriff sale costs:</u> Allows a sheriff to charge a person enforcing a mortgage foreclosure judgment a fee of not more than \$200 for sheriff's sale costs.

SALARIES AND BENEFITS:

S.E.A. 88, P.L. 28, *Judges' Retirement Benefits*

Effective July 1, 2005

Provides that a retired judge who receives a salary from the state for services performed, except for services performed as a regular judge or a magistrate, to continue receiving judicial retirement benefits.

S.E.A. 363, P.L. 159, Judicial salaries

Effective July 1, 2005

Increases the annual salary paid by the state of each full-time judge of a circuit, superior, municipal, county, or probate court from \$90,000 to \$110,500 and allows a county to supplement that salary; increases the annual salary of each judge of the court of appeals from \$110,000 to \$129,800; increases the annual salary of each justice of the

supreme court from \$115,000 to \$133,600. Beginning July 1, 2006, the state portion of each judge's salary shall be increased in each fiscal year in which the general assembly does not amend the salary section of the law by a percentage, as determined by the budget director, which would equal the statewide average percentage increase of salaries of state employees in the executive branch who are in a similar salary bracket.

TRAFFIC LAW:

S.E.A. 242, P.L. 153, Driver's license reinstatement fees

Effective July 1, 2005

Adds provisions for indigent persons to petition the court to waive fees for reinstatement of driver's license. The court may waive a reinstatement fee if the person is indigent, has presented proof of future financial responsibility and the waiver is appropriate in light of the person's character and nature and circumstances surrounding the license suspension. The court may impose other reasonable conditions on the person if the court waives a reinstatement fee.

H.E.A. 1073, P.L. 210,

Motor vehicle matters

Effective Upon Passage (§ 4, 77-80, & 82-83), July 1, 2005 (§1-3, 5-76, & 81)

Permits the bureau to conduct a reasonable investigation of a driver's continued fitness to operate a motor vehicle when the bureau has reason to believe that a licensed driver may not be able to operate a motor vehicle safely. The bureau may not suspend or revoke the license of a licensed driver whose fitness to drive safely is questioned until a reasonable investigation of the driver's continued fitness has been made by the bureau. Grants immunity from civil or criminal liability to a licensed physician, optometrist, or advanced practice nurse who makes a good faith report to the bureau concerning a patient's fitness to operate a motor vehicle not more than 30 days after having examined the patient.

Provides that certain driver's licenses under certain circumstances and state identification cards expire six years after issuance. Provides that certain driver's licenses issued to individuals at least 85 years of age expire two years after issuance.

This bill also makes changes to provisions concerning public record confidentiality, vehicle registration, bureau fees, driver's licenses, various definitions, and farm vehicles.

Other bills of interest:

S.E.A. 217, P.L. 151, Speed limit increases

Effective July 1, 2005

NOTE: H.E.A. 1047, P.L. 167-2003, regarding small claims court jurisdiction, amends the small claims jurisdictional limit to \$6,000 statewide beginning July 1, 2005.

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